Supreme Court, U. S.
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No. 77-221

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

PHILLIPS PETROLEUM COMPANY, *Petitioner*,

v.

ASHLAND OIL, INC., *et al.*, *Respondents*.

PETITION FOR REHEARING

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ASHLAND OIL, INC., *et al., Respondents.*

PETITION FOR REHEARING

Petitioner Phillips Petroleum Company respectfully petitions for rehearing of the denial of its petition for certiorari on October 31, 1977.

A circumstance of substantial effect, within the terms of Rule 58(2), has intervened since the filing of the petition for certiorari and the brief in opposition of Ashland Oil, Inc. That circumstance is the filing by the United States, No. 77-530, of a petition to review the same judgment of which review is sought in this case.

The purpose of this petition for rehearing is to enable the Court to grant Phillips' petition for certiorari should it decide to grant the Government's petition. *Compare Pickett* v. *Union Terminal Co.,* 313 U.S. 591,

314 U.S. 704 (1941); *Williams* v. *Jacksonville Terminal Co.*, 315 U.S. 386, 394 (1942).

Counsel for Phillips had understood, incorrectly as it now appears, that the pendency of the Government's petition was known to the Clerk's office and that the petition in Phillips' case therefore would not be acted on until the Government petition was ready for action. Phillips is filing at the same time as this petition a memorandum in support of the Government's petition for certiorari. In that memorandum we set out much of the discussion that had been planned for a combined reply brief in this case and memorandum in the Government's case. We note here only these points:

1. Phillips and the Government present a common question concerning the correctness of the decision below that federal statutes—the Natural Gas Act and Section 11 of the Helium Act, added by the Helium Act Amendments of 1960—entitle a producer/seller of helium to disregard the price term of a contract by which it has sold an entire natural gas stream, including helium. The Government's petition emphasizes one reason for review of that question by this Court: the court of appeals' reading of the federal statutes is of the greatest practical significance in laying Phillips and other purchasers of helium and the Government, which indemnified them, open to a potential liability in the hundreds of millions of dollars.

2. The Government urges that, if the statutes are read as nullifying contractual obligations, federal law and not state law properly governs the resulting judicial determination of the value of the helium; it urges further that the court of appeals' novel work-back method of valuation is an incorrect application of federal law. At the same time, the Government agrees that the question presented by Phillips—whether the court of appeals was correct in choosing federal law to govern its valuation of the helium—is an important question that may merit this Court's review. (U.S. Pet. 25.) Though Ashland in its brief in opposition has attempted to avoid the question by refusing to acknowledge that the court of appeals made a choice of law, the question is indeed an important one, with implications for many types of cases in which the Government stands in some relationship to a transaction between two private parties.

Petitioner therefore asks the Court to rehear and reconsider its denial of certiorari and upon such rehearing and reconsideration to grant the writ.

Respectfully submitted,

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Certificate of Counsel

I hereby certify that this petition for rehearing is presented in good faith and not for delay and that it is restricted to grounds specified in Rule 58(2).

EUGENE D. GULLAND